



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2019-0592; FRL-10001-81-Region 4]

Ocean Dumping: Cancellation of Final Designation for an Ocean Dredged Material

Disposal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to cancel the final designation of an ocean dredged material disposal site (ODMDS) pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The ODMDS is in the Atlantic Ocean offshore Wilmington, North Carolina. This proposed action is being taken because this site has been replaced by another permanent site. In addition, the EPA proposes to rename the permanent site that exists for the Wilmington, North Carolina area.

DATES: Comments must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OW-2019-0592, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments and accessing the docket and materials related to this proposed rule.
- E-mail: collins.garyw@epa.gov
- Mail: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia

30303.

Instructions: Direct your comments to Docket ID No. EPA-R04-OW-2019-0592. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy during normal business hours from the regional library at the U.S. Environmental Protection Agency, Region 4 Library, 9th Floor, 61 Forsyth Street,

Atlanta, Georgia 30303. For access to the documents at the Region 4 Library, contact the Region 4 Library Reference Desk at (404) 562-8190, between the hours of 9:00 a.m. to 12:00 p.m., and between the hours of 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562-9395; e-mail: collins.garyw@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this proposed action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Wilmington, North Carolina. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government ...	U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal governments ...	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this proposed action. For any questions regarding the applicability of this proposed action to a particular person, please refer to the contact person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed cancellation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that modifications in disposal site use which involve withdrawal of disposal sites from use will be made by promulgation in part 228. This site cancellation is being published as proposed rulemaking in accordance with § 228.11(a) of the Ocean Dumping Regulations, which permits the withdrawal of designated disposal sites from use based upon changed circumstances concerning use of the site.

III. Proposed Action

The proposed cancellation of the designation of this site is needed as a housekeeping measure. The ODMDS is no longer a suitable disposal option and has no foreseeable need. The Wilmington site has been replaced by a larger site due to changes in alignment of the Federal navigation channel, which now cuts through the original ODMDS. EPA also proposes to change the name of the New Wilmington ODMDS to the Wilmington ODMDS.

IV. Statutory and Executive Order Reviews

This proposed action complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This proposed action does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and

operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities. After considering the economic impacts of this proposed rule, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

d. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

e. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. The EPA specifically solicits comment on this proposed action from State and local officials.

f. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the proposed action will not have a direct effect on Indian Tribes, on the relationship

between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comments on this proposed action from tribal officials.

g. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

h. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

j. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed action is only cancelling the designation of an ODMDS which is no longer viable.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This proposed action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: August 27, 2019.

Mary S. Walker

Regional Administrator, Region 4.

For the reasons set out in the preamble, the EPA proposes to amend chapter I, title 40 of the Code of Federal Register as follows:

PART 228 – CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by removing and reserving paragraph (h)(2) and revising paragraph (h)(20) introductory text to read as follows:

§ 228.15 Dumping sites designated on a final basis.

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(h) * * *

(20) Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

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[FR Doc. 2019-24066 Filed: 11/5/2019 8:45 am; Publication Date: 11/6/2019]